



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



MICHAEL P. FLANAGAN
SUPERINTENDENT OF
PUBLIC INSTRUCTION

**FISCAL YEAR 2005
CHILD AND ADULT CARE FOOD PROGRAM
OPERATIONAL MEMO #46**

TO: Child and Adult Care Food Program Institutions

FROM: Mary Ann Chartrand, Director
Grants Coordination and School Support

DATE: September 29, 2005

SUBJECT: **Federal Procurement Regulations and Horizon Software, LLC**

In 2002, Horizon Software, LLC provided the Food and Nutrition Service (FNS) with a memo directed to school business and food service personnel to address concerns that School Food Authorities (SFAs) were not drafting their own specifications and procurement documents for certain software acquisitions, but were instead using those written by Horizon. Horizon stated that the list of features "is not a Bid or RFP Specification form and should not be used as such."

However, FNS has reviewed 10 requests for proposals (RFPs) for SFA software that have been issued within the last 2 years. The specifications in 8 of these 10 proposals bear a striking resemblance to a list of features offered to SFAs by Horizon. In more than one proposal, the specifications listed contain the same typographical and formatting errors contained on Horizon's features list.

7 CFR Part 3016.60(b) prohibits awarding contracts to any entity that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions, or other procurement documents. While schools have broad discretion in gathering information for use in connection with procurements, information from potential bidders must be appropriately modified to develop tailored specifications; otherwise, these bidders must be excluded from competing for such procurements. *Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests.*

It is a concern that SFAs may not be properly responding to protests and concerns raised by potential contractors. Pursuant to 7 CFR 3016.36(b)(12), SFAs must have protest procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to the Michigan Department of Education.

STATE BOARD OF EDUCATION

KATHLEEN N. STRAUS – PRESIDENT • JOHN C. AUSTIN – VICE PRESIDENT
CAROLYN L. CURTIN – SECRETARY • MARIANNE YARED MCGUIRE – TREASURER
NANCY DANHOF – NASBE DELEGATE • ELIZABETH W. BAUER
REGINALD M. TURNER • EILEEN LAPPIN WEISER

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909
www.michigan.gov/mde • (517) 373-3324

Operational Memo #46
Page 2
September 29, 2005

As directed in Federal procurement regulations, any SFA that elects to use a potential contractor's information, such as copying a list of features drafted by a potential contractor instead of developing its own procurement documents and processes, cannot use nonprofit school food service funds for the resulting contract if that potential vendor is permitted to compete for the award, whether or not the contract is awarded to that potential vendor. In addition, SFAs must have protest procedures in place, enact those procedures when necessary, and disclose information regarding a protest to the State agency.

If you have any questions, call the CACFP office at (517) 373-7391.